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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 1005

WADE McNEIL,

Petitioner,

v.

STEWART UDALL, individually, and as Secretary of the Interior,

---

Reply Brief

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Reply Brief

Petitioner believes that because of certain ambiguous statements as to the facts contained in Respondent's Memorandum, a Reply Brief is necessary.

The second full paragraph on Page Three of the Answer Brief leaves the impression that the Bureau of Land Management, in allocating to petitioner 143 animal units preference rights, was granting to petitioner the number of animal units equal to "the developed capacity of what he owned in the 1929-1934 period." The fact is that the 143 animal units represents the average number of animal units being run by the petitioner from the base property owned in 1929-1934 during that period and not the developed capacity of that base property of 407 animal units (J. A. 70, 52).

The Court's attention is called to the discussion appearing in the memorandum opinion of the District Court appearing in the Joint Appendix beginning at Page 22. Among other things, Judge Tamm said,

> "It is this Court's view that insofar as the plaintiff or any other rancher in similar status, expended his time, effort and capital to the development of his stock-raising business upon the base property used during the 1929-1934 period, he was the beneficiary of a preferential status. This Court holds that this preferential status was affixed to and became an intrinsic part of the base property as it existed at the end of 1934 and that the plaintiff's improvement of his base property insofar as any preferential status is concerned."

This language from the memorandum opinion and the statement appearing in the second full paragraph at Page Three of the Memorandum for the Respondent in Opposition, sets forth fully the gist of the disagreement between the petitioner and the Secretary. The Secretary's position, in spite of the language contained in McNeil v. Seaton, 281

F. 2d 931 (C.A. D.C.) (Pet. App. 2, pp. 1-13) and in Judge Tamm's opinion is and always has been that petitioner's preference right is limited to his base as it was in the 1929-1934 period and that is the way he has granted grazing rights to petitioner.

A second statement that requires clarification appears in the Memorandum in the full paragraph appearing at Page Four. This statement reads,

> "Petition claims essentially that once having been accorded preferential status, he may increase that preference yearly by increasing the productivity of his base lands."

This is not and never has been petitioner's claim. What petitioner claims is that under the Taylor Grazing Act and the decision in McNeil v. Seaton, supra, and Red Canyon Sheep Company v. Ickes, 68 App. D.C. 207, 98 F. 2d 308 (1938) petitioner, in the words of the Court in McNeil v. Seaton "* * *was entitled to invest his time, effort and capital and to develop his stockraising business, all subject, of course, to similar preferences to be accorded in the affected areas to other comparably situated."

Petitioner had completed the development of the base property which he owned during the 1929-1934 period before the operations of two of the competing users, Locke and Matovich, were even established (J.A. 70). He expended his time, effort and money in reliance on statements made to him by agents of the Secretary that he would be given grazing rights to the full extent of the developed capacity of his base. The capacity of his 1929-1934 base has not been increased since 1945. He has not increased its capacity on a year-to-year basis as stated by counsel. The Memoran-

dum in Opposition to the issuance of the writ shows the confusion that has resulted from the various opinions of the Court of Appeals and that the writ should issue so the Court can fully consider the questions raised and set at rest the conflicts existing in the interpretation of the Taylor Act.

Finally we urge again that as this cause now stands petitioner has suffered a grave injustice at the hands of representatives of his government. He was by Congress granted certain preference rights as stated by the Court in McNeil v. Seaton. The effect of the judgment in McNeil v. Udall (Pet. App. 1) is to relegate petitioner to a status subordinate to those who have, under the Taylor Act, no preference.

The writ should issue.

Respectfully submitted,

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